

UNITED STATES DISTRICT COURT  
 XXXXXXXXX SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK DISTRICT COUNCIL OF  
 CARPENTERS PENSION FUND, et al

Plaintiffs

-v-

KW CONSTRUCTION INC., as Successor to  
 KW GENERAL CONTRACTOR, INC., and  
 JOHN WHYTE d/b/a KW CONSTRUCTION, INC.  
 and JOHN WHYTE, individually Defendants

Bond No. CGB 7602361

USDC SDNY  
 DOCUMENT  
 ELECTRONICALLY FILED  
 DOC #: 8/12/08  
 DATE FILED: 8/12/08

**Undertaking on Attachment**

INDEX NO. 07 CV 8008 (RJS)

WHEREAS, the above-named Plaintiff(s) New York City District Council of Carpenters Welfare Fund has/have applied, or is/are about to apply in the above-entitled action to one of the Justices of this Court for an order of attachment against the property of the above-named Defendant(s) John Whyte and KW Construction Inc. under and by virtue of the Civil Practice Law and Rules.

NOW, THEREFORE, the Fidelity and Deposit Company of Maryland having an office and principal place of business in the State of New York, at 165 Broadway, New York, N.Y. 10006 hereby undertake, pursuant to the Statute, in the amount of FIFTY THOUSAND AND NO/100 Dollars (\$50,000.00 ), of which amount the sum of TWENTY FIVE THOUSAND AND NO/100 Dollars (\$25,000.00 ), thereof is conditioned that the plaintiff(s) will pay to the defendant(s) all costs and damages including reasonable attorney's fees which may be sustained by reason of the attachment if the defendant(s) recover judgment, or it is finally decided that the plaintiff(s) was not entitled to an attachment of property to the defendant(s) and the balance of TWENTY FIVE THOUSAND AND NO/100 Dollars (\$25,000.00 ), is conditioned that the plaintiff will pay to the sheriff all of his allowable fees.

Dated. July 31, 2008

APPROVED 8/12/08

J. Michael Michael  
CLark

CGB26300NY10011

BY David J. Thomas  
Deputy Clerk

Fidelity and Deposit Company of Maryland

By Dolores Vargas  
 Dolores Vargas, Attorney-in-Fact

**NOTARIAL JURAT****INDIVIDUAL ACKNOWLEDGEMENT**State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, and known to me to be the individual \_\_\_\_\_ who executed the foregoing instrument and acknowledge to me that he/she/they executed the same.

(Signature of Notary Public)  
My Commission expires \_\_\_\_\_

**PARTNERSHIP ACKNOWLEDGEMENT**State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, and known to me to be a member of the partnership of \_\_\_\_\_, acknowledged that he/she executed the foregoing instrument as the act of the said partnership.

(Signature of Notary Public)  
My Commission \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, deposes and says that \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing Agreement; that \_\_\_\_\_ he knows the seal of the said corporation; that the seal affixed to the said Agreement is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that \_\_\_\_\_ he signed (her)(his) name thereto by like order.

(Signature of Notary Public)  
My commission expires \_\_\_\_\_

**SURETY ACKNOWLEDGEMENT**State of \_\_\_\_\_ New York \_\_\_\_\_  
County of \_\_\_\_\_ New York \_\_\_\_\_

On this 31st day of July, 2008, before me personally came Dolores Vargas, to me known, who being by me duly sworn, deposes and says that she resides in the City of New York; that she is the ATTORNEY-IN-FACT of the above signed surety, the corporation described in and which executed the foregoing Agreement; that she knows the seal of the said corporation; that the seal affixed to the said Agreement is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

JOANNE S. CAULFIELD  
Notary Public, State of New York  
No. 01CA6134868  
Qualified in New York County  
Commission Expires 07/31/2009

*Joanne S. Caulfield*  
(Signature of Notary Public)



## FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

3910 KESWICK ROAD, BALTIMORE, MD 21211-2226

### Statement of Financial Condition As Of December 31, 2007

#### ASSETS

Bonds .....	\$ 152,119,394
Stocks .....	43,598,075
Cash and Short Term Investments .....	58,417,758
Reinsurance Recoverable .....	20,969,268
Other Accounts Receivable .....	40,255,904
<b>TOTAL ADMITTED ASSETS .....</b>	<b>\$ 315,360,399</b>

#### LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses .....	\$ 875,904
Ceded Reinsurance Premiums Payable .....	70,455,734
Securities Lending Collateral Liability .....	43,430,120
<b>TOTAL LIABILITIES .....</b>	<b>\$ 114,761,758</b>
Capital Stock, Paid Up .....	\$ 5,000,000
Surplus .....	195,598,641
Surplus as regards Policyholders .....	200,598,641
<b>TOTAL .....</b>	<b>\$ 315,360,399</b>

Securities carried at \$34,597,845 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2007 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$315,825,091 and surplus as regards policyholders \$201,063,333.

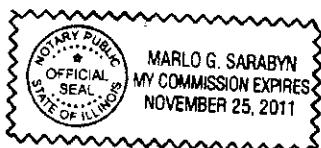
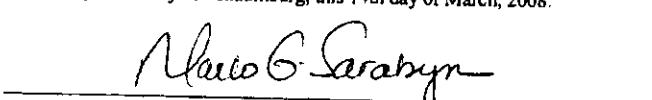
I, DAVID A. BOWERS, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2007.



*Corporate Secretary*

State of Illinois  
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 14th day of March, 2008.

*Notary Public*

Bond Number: CGB7602361

## Power of Attorney

## FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: 3910 KESWICK ROAD, BALTIMORE, MD 21211

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by Frank E. Martin, Jr., Vice President and Gerald F. Haley, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the next page hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Dolores Vargas, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: Bond or undertaking number CGB7602361, issued on behalf of New York City Council, as Principal in a penalty not to exceed the sum of Sixty Thousand and Zero Cents (\$ 60,000) and the execution of such bond or undertaking in pursuance of these presents, shall be as binding upon said company, as fully and amply, to all intents and purposes, as if it had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, MD, in their own proper persons.

The said Assistant Secretary does hereby certify that the extract set forth on the next page hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND this 31st day of July, A.D. 2008.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gerald F. Haley

Assistant Secretary

By:

Frank E. Martin, Jr.

Vice President

State of Maryland      }  
County of Baltimore      }  
                            } ss:

On this 31st day of July, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came Frank E. Martin, Jr., Vice President, and Gerald F. Haley, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn  
Notary Public  
My Commission Expires: July 14, 2011

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice President or any Vice President that is specially authorized by the Board of Directors or the Chairman in concurrence with the Corporate Secretary, shall have the power, by and with the concurrence of the Secretary, to appoint Attorney-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto."

**CERTIFICATE**

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice President who executed the said Power of Attorney was one of the additional Vice Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 5th day of May, 1994.

**RESOLVED:** "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

**IN TESTIMONY WHEREOF,** I have hereunto subscribed my name and affixed the Corporate Seal of the said Company, this 31st day of July 2008.



L.L. Goucher

*Assistant Secretary*

